1210 & 1215

MT LEGISLATIVE HISTORY

Chapter 6 1979

Bill H 41 S ___ Original bill & hist. ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 1/11	✓C	Hearing Date(s) ___	___C
~~1/12~~ 1/12	___C	1/18	✓C
___	___C	___	___C
___	___C	___	___C
Date Out 1/12	___C	___	___C

Did this bill originate in an interim committee? ___Yes ___No

Committee ___ Report ___

CHAPTER NO. 6

HOUSE BILL NO. 41

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 4, 1979	Introduced and referred to Committee on Judiciary.
January 6, 1979	On motion, joint rule 6-6 suspended and Sponsor's signature allowed to be added to Pre-Filed Bill.
January 12, 1979	Committee recommend bill do pass. Report adopted.
January 13, 1979	On motion rules suspended and bill placed on Second reading this day.
	Second reading, do pass.
	On motion rules suspended and bill placed on third reading this day.
	Third reading, passed. Considered correctly engrossed. Transmitted to Second House.

IN THE SENATE

January 15, 1979	Introduced and referred to Committee on Judiciary.
January 18, 1979	Committee recommend bill be concurred in as amended. Report adopted.
January 20, 1979	Second reading, be concurred in.
January 22, 1979	Third reading, concurred in as amended.

IN THE HOUSE

January 22, 1979	Returned from Second House. Concurred in as amended.
January 23, 1979	Second reading, amendments adopted.
January 24, 1979	Third reading, amendments adopted.
	Sent to enrolling.
	Report correctly enrolled.

HOUSE BILL NO. 41

INTRODUCED BY _____

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS; AND REPEALING SECTIONS 91-104.1, 91-104.2, 91-219, 91-519, 91-523, 91-4312, AND 93-1401-3, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-2-305, MCA, is amended to read:

"72-2-305. Who may witness -- effect of witness by beneficiary. (1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will is not invalid because the will is signed by an interested witness.

(3) All beneficial devises made in any will to a subscribing witness thereto are void unless there are two other competent subscribing witnesses to the same, but a mere charge on the estate of the testator does not prevent his creditors from being competent witnesses to his will.

(4) If a witness, to whom any beneficial devise, void under ~~the preceding section~~, subsection (3) is made, would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will."

Section 2. Section 72-3-309, MCA, is amended to read:

"72-3-309. Testimony of attesting witnesses in contested cases -- presumptions for self-proved will. (1) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state and competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed, subject to rebuttal, without the testimony of any witness, upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit."

Section 3. Section 72-3-803, MCA, is amended to read:

"72-3-803. Nonclaim -- limitations on presentation of claims -- exceptions. (1) With the exception of claims for taxes and claims founded on tort, ~~All~~ all claims against a decedent's estate ~~with the exception of claims for taxes and~~

~~claims-founded-on-tort~~ which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) within 4 months after the date of the first publication of notice to creditors if notice is given in compliance with 72-3-801~~,~~ provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state; or

(b) within 3 years after the decedent's death if notice to creditors has not been published.

(2) With the exception of claims for taxes and claims founded on tort, ~~All~~ all claims against a decedent's estate ~~with the exception of claims for taxes and claims founded on tort~~ which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within 4 months after it arises.

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance."

Section 4. Section 72-3-916, MCA, is amended to read:

"72-3-916. Distribution to trustee -- registration -- bond. (1) Before distributing to a trustee, the personal representative may require that the trust be registered, if the state in which it is to be administered provides for registration, and that the trustee inform in writing the current beneficiaries ~~as provided in [section 7-303 of the Uniform Probate Code as promulgated by the national conference of commissioners on uniform state laws]~~ and, if possible, one or more persons who under 72-1-303 may represent beneficiaries with future interests of his name and address and provide each with a copy of the terms of the trust which describe or affect his interest and with

relevant information about the assets of the trust and the particulars relating to the administration.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (1) and (2)."

Section 5. Section 72-5-414, MCA, is amended to read:

"72-5-414. Resignation or removal of conservator for cause -- successor conservator. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor."

Section 6. Section 72-5-422, MCA, is amended to read:

"72-5-422. Power of court to authorize particular protective arrangements or transactions without appointing conservator. (1) If it is established in a proper proceeding

that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include but are not limited to:

(a) payment, delivery, deposit, or retention of funds or property;

(b) sale, mortgage, lease, or other transfer of property;

(c) entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or

(d) addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the

interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who, ~~shall have~~ upon appointment, has the authority conferred by the order and ~~serve~~ serves until discharged by order after report to the court of all matters done pursuant to the order of appointment."

Section 7. Section 72-5-425, MCA, is amended to read:

"72-5-425. Title by appointment as conservator -- appointment not transfer for certain purposes. (1) The appointment of a conservator vests in ~~his~~ him title as trustee to all property of the protected person presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys-in-fact.

(2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of

persons to make specific provision by contract or dispositive instrument relating to a conservator."

Section 8. Section 72-10-101, MCA, is amended to read:

"72-10-101. No requirement for orders and judgments to recite jurisdictional facts. Orders and judgments made by the court or judge in probate proceedings need not recite the existence of facts or the performance of acts upon which the jurisdiction of the court or judge may depend, but it ~~shall~~ is only be necessary that they contain the matters ordered, except as otherwise provided in ~~chapters 10 through 16~~ this title."

Section 9. Section 72-10-104, MCA, is amended to read:

"72-10-104. Service on guardian equivalent to service on ward interested in estate. Whenever ~~an infant~~ a minor, ~~insane~~ mentally ill, or incompetent person has a guardian of his estate residing in this state, personal service upon the guardian of any process, notice, or order of the court or judge concerning the estate of a deceased person in which the ward is interested is equivalent to service upon the ward, and ~~it is the duty of~~ the guardian ~~to~~ shall attend to the interests of the ward in the matter. Such guardian may also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind might do."

Section 10. Section 72-10-107, MCA, is amended to

read:

"72-10-107. Proceeding in chambers -- jury trial. (1) All orders mentioned in ~~chapters 10 through 16~~ this title and all proceedings in matters of probate may be made or heard either before the court or the judge thereof in chambers.

(2) When a jury is needed, the court or judge may order the trial to take place in court as provided in Title 25."

Section 11. Section 72-10-109, MCA, is amended to read:

"72-10-109. Citation -- how issued. The citation may be issued by the clerk, upon the application of any party, without an order of the judge, except in cases in which such order is expressly required by the provisions of ~~chapters 10 through 16 expressly required~~ this title."

Section 12. Section 72-10-110, MCA, is amended to read:

"72-10-110. Citation -- how and when served. (1) The citation must be served in the same manner as a summons in a civil action.

(2) When no other time is specifically prescribed in ~~chapters 10 through 16~~ this title, citations must be served at least 5 days before the return day thereof."

Section 13. Section 72-10-111, MCA, is amended to

read:

"72-10-111. Costs -- discretion of court in ordering payment. When it is not otherwise prescribed in ~~chapters 10 through 16~~ this title, the district court or supreme court on appeal may, in its discretion, order costs to be paid by any party to the proceedings or out of the assets of the estate, as justice may require. Execution for costs may issue out of the district court."

Section 14. Section 72-10-202, MCA, is amended to read:

"72-10-202. Recorded order to impart notice from date of filing. When it is provided in ~~chapters 10 through 16~~ this title that any order of the court or judge or a copy thereof must be recorded in the office of the county clerk, notice of its contents, from the time of filing ~~the same~~ it for record, ~~notice~~ is imparted to all persons ~~of the contents thereof~~."

Section 15. Section 72-12-802, MCA, is amended to read:

"72-12-802. Time limitations -- effect of vacancy in administration. The time during which there ~~shall be~~ is a vacancy in the administration ~~must~~ is not be included in any limitations ~~herein~~ prescribed in this title."

Section 16. Section 72-14-101, MCA, is amended to read:

"72-14-101. Short title. Parts 1 through 3 of this chapter are to be known as the "Escheated Property Act"~~, and it provides the exclusive method for vesting title in the state of Montana of all unclaimed property.~~"

Section 17. Section 72-14-102, MCA, is amended to read:

"72-14-102. When title to escheated property vests in state. (1) Whenever the title to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, such title ~~shall vest~~ vests in the state of Montana immediately upon the death of the owner without an inquest or other similar proceeding ~~in the nature of office found~~, and there ~~shall be~~ is no presumption that such owner died leaving heirs or next of kin.

(2) In relation to property other than estates, title ~~shall be~~ is presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within this state ~~has been or shall be and remain~~ remains unknown for a period of 20 successive years, and during such period whenever the whereabouts of such owner, beneficial owner, or ~~persons has been or shall be and remain~~ person remains unknown and during such period whenever any personal property wherever situated ~~has been or shall be and remain~~ remains unclaimed, then in such event such personal property ~~shall escheat~~ escheats to the state."

Section 18. Section 72-15-101, MCA, is amended to read:

"72-15-101. Other provisions to supplement chapter. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties or for the administration of an estate in his hands, the provisions of ~~chapters 10 through 16~~ this title must govern."

Section 19. Section 72-16-201, MCA, is amended to read:

"72-16-201. Powers of department generally -- duty to supervise administration of tax laws -- reports. (1) The department of revenue in the conduct of inheritance tax affairs ~~shall have~~ has the same ~~and similar~~ powers ~~and authority~~ for gathering information and making investigations as is conferred by law on the department in the performance of its other duties.

(2) ~~It shall be the duty of the~~ The department to shall supervise the administration of ~~and to investigate and cause to be investigated the administration of~~ the inheritance tax laws and investigate such particular estates to which the inheritance tax laws apply throughout the various counties of the state and ~~to~~ cause to be made and filed in its office reports of such ~~investigation~~ investigations, together with specific information and facts

as to particular estates, that may seem to require special consideration and attention by the ~~legal~~ department of ~~the state~~ justice; but no information so acquired ~~shall~~ may, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate."

Section 20. Section 72-16-208, MCA, is amended to read:

"72-16-208. Powers and duties of department as to nonresident estates. The department of revenue shall also gather information and make investigations and reports concerning the estates of nonresident decedents within the provisions of the inheritance tax laws and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the ~~legal~~ department of ~~the state~~ justice and to the proper district court for appropriate legal action; but no information so acquired ~~shall~~ may, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate."

Section 21. Section 72-16-210, MCA, is amended to read:

"72-16-210. Duty of ~~attorney general~~ justice department. ~~It shall be the duty of the legal~~ The department of ~~the state to~~ justice shall carry out and enforce the recommendations and directions of the department of revenue

in all matters pertaining to the conduct of inheritance tax affairs."

Section 22. Section 72-16-306, MCA, is amended to read:

"72-16-306. Recording date prima facie date of transfer -- transfers recorded after death. ~~All transfers~~ Recorded papers evidencing a transfer of property, real, personal, or mixed, or of any interest therein coming within the provisions of ~~[this section] shall be~~ parts 1 through 8 are prima facie proof, for the purposes of ~~[this act]~~ parts 1 through 8, ~~to have been~~ that it was made as of the date upon which ~~the~~ such papers ~~evidencing such transfer are~~ were recorded, ~~and all~~ Any such ~~transfers~~ transfer, if recorded after the death of the person or persons making such transfer, whatever the form of such transfer, ~~shall be deemed~~ is considered, for the purposes of taxation under the provisions of ~~[this act]~~ parts 1 through 8, to have been made by will."

Section 23. Section 72-16-312, MCA, is amended to read:

"72-16-312. Exemption -- transfers for charitable or public purposes. (1) The following transfers are totally exempt:

(a) all property transferred to the state or any of its institutions or to ~~municipal corporations~~ local

governments within the state for strictly ~~county--city, town---or---municipal~~ local government or other public purposes;

(b) all property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, if any of the following conditions is present:

(i) the society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

(ii) the property transferred is limited for use within this state;

(iii) the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country and at the date of the decedent's death any one of the following conditions existed:

(A) the other state, foreign state, or foreign country

did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(B) the laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

(C) the society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are without discrimination gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(2) The tax imposed by 72-16-301 does not apply to

transfers to ~~the state of Montana or any of its institutions or to county, town, or municipal corporations within the state for strictly county, town, municipal or other public purposes and~~ corporations of this state organized under its laws or voluntary associations, organized solely for religious, charitable, or educational purposes, which ~~shall~~ use the property so transferred exclusively for the purposes of their organization within the state."

Section 24. Section 72-16-423, MCA, is amended to read:

"72-16-423. Court order to be delivered and taxes paid before final judgment in estate. A copy of the court order referred to in 72-16-422 shall be delivered or mailed to the county treasurer, the administrator or executor, and the department of revenue, and no final judgment ~~shall~~ may be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed and receipts are filed with ~~such~~ the court showing the payment of all such taxes or proof is filed showing that the ~~bond~~ permission for deferral of payment authorized by 72-16-438 has been given."

Section 25. Section 72-16-437, MCA, is amended to read:

"72-16-437. Personal representative not entitled to closing unless tax paid or bond filed. No personal

representative or trustee ~~shall be~~ is entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of parts 1 through 8 unless he ~~shall~~ produce produces such receipt or a certified copy thereof or unless ~~a bond shall have been filed as prescribed by~~ permission for deferral of payment has been granted as provided in 72-16-438."

Section 26. Section 72-16-443, MCA, is amended to read:

"72-16-443. Collection of unpaid taxes. (1) If any county treasurer, the state treasurer, or the department of revenue ~~shall have~~ has reason to believe that any tax is due and unpaid under the provisions of parts 1 through 8, after the refusal or neglect of any person liable therefor to pay the same, he or it shall notify the attorney general in writing of such failure or neglect; and the attorney general, if he have has probable cause to believe that such tax is due and unpaid, shall apply to the district court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than 3 months from the date of such citation, and show cause why the tax should not be paid.

(2) The judge of the district court, upon such application and whenever it ~~shall appear~~ appears to him that any such tax accruing under parts 1 through 8 has not been

paid as required by law, shall issue such citation~~,~~ ~~and the~~ The service of such citation and the time, manner, and proof thereof and the hearing and determination thereof shall conform as near as ~~may~~ be to the provisions of the laws governing probate practice of this state.

(3) Whenever it ~~shall appear~~ appears that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of parts 1 through 8 in ~~said~~ such district court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax~~,~~; and ~~it shall be the duty of~~ the attorney general, in the name of the state, ~~to~~ shall sue for and enforce the collection of such tax, and ~~it is made the duty of~~ the county attorney of the county ~~to~~ shall appear for and act on behalf of any county treasurer~~,~~ who ~~shall be~~ is cited to appear before any district court under the provisions of parts 1 through 8."

Section 27. Section 72-16-704, MCA, is amended to read:

"72-16-704. Apportionment of deductions when property partly within and partly without the state. Whenever a tax ~~may be~~ is due from the estate, or the beneficiaries therein, of any resident or nonresident decedent upon the transfer of any property~~,~~ when the property or the estate left by such decedent is partly within and partly without this state~~,~~ or

upon any stocks, bonds, mortgages, or other securities representing property or estate partly within and partly without this state, any beneficiary of such estate ~~shall be~~ is entitled to deduct only his proper proportion of that portion of the total debts and expenses of administration which the gross estate in Montana or within its jurisdiction bears to the gross estate both within and without this state~~, but no deduction shall be made for any federal estate, inheritance, succession, or transfer taxes paid to the United States~~. As to his Montana exemption, each beneficiary ~~shall be~~ is entitled to deduct only that portion represented by the ratio between his interest in the property in this state or within its jurisdiction and his interest in the entire estate."

Section 28. Section 72-16-801, MCA, is amended to read:

"72-16-801. Exemption of intangible personal property of nonresident decedent -- when. The tax imposed by parts 3, 7, and 9~~,~~ and this part~~,~~ in respect of personal property, except tangible personal property having an actual situs in this state, ~~shall~~ is not be payable if:

(1) the decedent is a resident of a state or territory of the United States which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state,

except tangible personal property having an actual situs in that state or territory; or

(2) the laws of the state or territory of residence of the nonresident decedent at the time of the transfer contained a reciprocal provision under which nonresidents of that state were exempted from transfer ~~tax~~ taxes or death taxes of every character in respect of personal property, except tangible personal property having an actual situs in that state, ~~providing~~ provided the state or territory of residence of such nonresident decedent allowed a similar exemption to residents of this state."

Section 29. Section 72-16-906, MCA, is amended to read:

"72-16-906. Required filings. ~~It shall be the duty of the~~ The personal representative of the estate of any decedent whose estate ~~may be~~ is subject to the payment of a United States estate tax ~~to~~ shall file duplicates of the United States estate tax returns with the district court of the county in which such estate is being probated and with the department of revenue. He shall also file with such court and with the department a certificate or other evidence from the ~~bureau of~~ internal revenue service showing the amount of the United States estate tax as computed by that ~~department~~ agency."

Section 30. Section 72-20-409, MCA, is amended to

read:

"72-20-409. Appeal. The decree so rendered ~~shall be~~ is a final order from which any party in interest may appeal as in civil actions to the ~~district~~ supreme court of the state of Montana."

Section 31. Section 72-24-103, MCA, is amended to read:

"72-24-103. For what purposes express trusts may be created. Express trusts may be created for any of the following purposes:

(1) to sell real property and apply or dispose of the proceeds in accordance with the instrument creating the trust;

(2) to mortgage or lease real property for the benefit of annuitants or other legatees or for the purpose of satisfying any charge thereon;

(3) to receive the rents and profits of real property and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of such person or for any shorter term, subject to ~~the rules of 70-1-410, Title 70, chapter 15, part 2, Title 70, chapter 17, part 1, and 70-27-104 through 70-27-107~~ Title 70, chapter 1, part 4; or

(4) to receive the rents and profits of real property

and to accumulate the same for the purposes and within the limits prescribed by ~~the sections above enumerated~~ Title 70, chapter 1, part 4."

Section 32. Section 72-26-201, MCA, is amended to read:

"72-26-201. Manner of making gift. (1) An adult person may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift:

(a) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person (an adult member of the minor's family, a guardian of the minor), or a trust company, followed in substance by the words: "as custodian for ... (name of minor) under the Montana Uniform Gifts to Minors Act";

(b) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor (an adult member, other than the donor, of the minor's family, a guardian of the minor) or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE MONTANA UNIFORM GIFTS TO MINORS ACT

I, ..., (name of donor), hereby deliver to .... (name of custodian) as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act, the following

security(ies):

(~~Insert~~ insert an appropriate description of the security or securities delivered sufficient to identify it or them)

..... (signature of donor)

..... (name of custodian) hereby acknowledges receipt of the ~~above-described~~ above-described security(ies) as custodian for the above minor under the Montana Uniform Gifts to Minors Act.

Dated: .....

.....~~Signature~~ (signature of custodian)".

(c) if the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution for a credit to an account in the name of the donor, another adult (an adult member of the minor's family, a guardian of the minor), or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act".

(2) Any gift made in a manner prescribed in subsection (1) may be made to only one minor, and only one person may be the custodian.

(3) A donor who makes a gift to a minor in a manner prescribed in subsection (1) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the

donor's failure to comply with this subsection nor his designation of an ineligible person as custodian nor renunciation by the person designated as custodian affects the consummation of the gift.

(4) If the subject ~~to~~ of the gift is a life insurance policy or annuity contract, an adult person may, during his lifetime, make a gift thereof to a person who is a minor on the date of the gift by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult, an adult member of the minor's family, a guardian of the minor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act".

Section 33. Section 72-26-402, MCA, is amended to read:

"72-26-402. Designation of successor by custodian or minor. (1) A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated and the minor has attained the age of 14 years, the minor may designate a successor custodian by executing an

instrument of designation before a subscribing witness other than the successor.

(2) The designation of a successor custodian as provided in subsection (1) takes effect as to each item of the custodial property when the custodian resigns, dies, or becomes legally incapacitated and the custodian or his legal representative:

(a) causes the item, if it is a security which is custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act"; and

(b) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(3) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (1) shall promptly do all things within his power to put each item of the

custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (1) by the custodian or, if none, by the minor if he has no guardian and has attained the age of 14 years or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (1) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(4) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (1) is not eligible, dies, or becomes legally incapacitated before the minor attains the age of 18 years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (1), a donor, or his legal representative, the legal representative of the custodian,

or an adult member of the minor's family may petition the court for the designation of a successor custodian."

Section 34. Section 72-30-204, MCA, is amended to read:

"72-30-204. Allowable investments -- retention of property. In addition to an investment otherwise authorized by law or by the applicable gift instrument and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or ~~if~~ in the applicable law other than law relating to investment by a fiduciary, may:

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations;, shares in or obligations of associations, partnerships, or individuals;, and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or part of any institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board."

Section 35. Repealer. Sections 91-104.1, 91-104.2, 91-219, 91-519, 91-523, 91-4312, and 93-1401-3, R.C.M. 1947, are repealed.

-End-

REPRESENTATIVE KEMMIS: The bill appears to do more than counting of bails and forfeitures. Whereupon Mr. Tooley said that in the criminal act they are not allowed to count on the conviction side. The question was raised that they might be causing a problem somewhere down the line if the was passed.

Hearing closed on HB #75.

HOUSE BILL NO. 10: Larry Weinberg of the legislative counsel presented the bill. This is a code bill to revise and clarify the laws concerning state lands. This is in the same context as the other code commissioner bills. It is intended to clean up the archaic language and grammar. It went through the bill and explained the various changes.

LEO BARRY: Department of State Lands. I am just here to answer questions. Some parts of the bill were a rewrite of a present law to make it more understandable.

Representative Day raised the question of sections and parcels on page 6, section 7, line 9. At the present time there are portions of land that are not sections. He asked if this had created any problems at any time for the department.

MR. BARRY: We have not encountered this problem but it could come up and could create difficulties.

Having no further discussion the hearing closed on HB #10.

HOUSE BILL NO. 41: Bob Pyfer, from the Legislative Counsel. This bill is to clean up the language and revise the laws relating to estates, trusts, and fiduciary relationships. Some of the clause was not of the uniform probate code. I would like to go through the repealer very briefly and the RCM sections. He mentioned that part of section 27 was in conflict with another section where they are allowable. The repealer sections are meaningless and should be taken off the books.

Representative Eudaily questioned parts of page 16 and 17. After no further discussion the hearing closed on House Bill #41.

HOUSE BILL NO. 32: Representative Quilici as sponsor of the bill stated that this bill relates to crime victims compensation and to try to make state statutes comply with federal requirements. I would like to introduce Mr. Norm

HOUSE BILL NO. 41: Representative Eudaily moved "do pass". The motion carried with the vote unanimous. Representative Keyser moved to the consent calendar with the same caveat as on the former bills.

HOUSE BILL NO. 75: Representative Kemmis moved to amend page 2, line 16, strike; "purposes of" and the motion carried with the vote unanimous.

Representative Lory moved "do pass as amended". The motion carried with the vote unanimous.

The executive meeting recessed to hear testimony from the governor's office concerning their stand on House Bill No. 12.

The executive session resumed at 10:30 a.m.

HOUSE JOINT RESOLUTION #2: Representative Day moved "do pass" and the motion carried with the vote unanimous. Representative Day moved to place the bill on the consent calendar with the same caveat as before. The motion carried with the vote unanimous.

HOUSE BILL NO. 83: Representative Lory moved "do pass" and the motion carried with the vote unanimous. Discussion decided that this bill should not be placed on the consent board. It should be debated.

Representative Lory moved to adjourn and the committee did so at 10:40 a.m.

John P. Scully, Chairman

Mary Ellen Connelly, Secretary

JPS:mec

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 18, 1979

The tenth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink on the above date at 10:03 a.m. in room 331.

ROLL CALL:

All members were present with the exception of Senator Mike Anderson, who was excused.

CONSIDERATION OF HOUSE BILL 41:

Bob Pyfer, Staff Attorney for the Legislative Council, gave an explanation of this bill, which is an act to generally revise the laws relating to estates, trusts, and fiduciary relationships. He emphasized sections 3, 27 and the repealers. Senator Turnage questioned repealing section 93-1401-3 and said he felt better with secondary evidence in the act. Senator Turnage moved to amend the bill on page 29, line 10 by striking the words, "and 93-1401-3," and to so amend the title. The motion carried unanimously.

Senator Turnage asked some questions of Tom Stoll, the administrator of the inheritance tax division of the Department of Revenue, particularly in regard to repealing sections 91-523 and 91-519. Mr. Stoll replied that when the preceding sections were repealed, that he thought that these sections did not apply anymore. Senator Turnage questioned Mr. Stoll in connection with the amendment there and Mr. Stoll replied that they had no problem with this amendment, that they had been having a problem for twenty years and that this would help clear it up.

Senator Turnage and Senator Towe questioned on page 14, section 22, the material "Recorded papers evidencing a transfer". Senator Turnage felt that the words "is considered" would make a difference and maybe should be "consistent". Mr. Pyfer explained that "shall be deemed" is the original language and that this change was just for style. Senator Turnage was concerned about transfer evidence that is not recorded. Mr. Pyfer said this was prima facie proof at the time the transfer was recorded and this was just a clarification. Mr. Stoll stated that they always interpreted prima facia evidence as the date of transfer and later on, if after death, to have been made by will. Senator Towe wondered how the department handled this where on one hand prima facie evidence of transfer is recorded and on the other hand the transfer is recorded after death. Mr. Stoll explained that this is handled as if it were a transfer at death. Their interpretation is that it is valid.

Senator Towe said he felt that this really didn't change the meaning and that he felt the bill was alright. Mr. Stoll and the committee agreed.

DISPOSITION OF HOUSE BILL 41:

Senator Turnage moved that House Bill 41 be concurred in as amended. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 6:

Joan Mayer, attorney for the Legislative Council gave an explanation of this bill, which is an act to revise the law relating to crimes. Senator Turnage asked if this applied only to criminal code. Ms. Mayer answered in the negative, saying that this would apply to all codes by changing "in this title" on page 1, line 16. She explained that they need these definitions elsewhere also. Senator Turnage felt that it was wrong to have criminal definitions crop up in the regular codes. Ms. Mayer said that this is the way it was originally written.

Senator Towe said that the definition of a home in a criminal action would certainly be different than the definition of a home in a tax matter.

Senator Turnage moved that on page 1, line 16, we insert the words "in this title" following word "title". The motion carried unanimously.

There was much discussion concerning repealing section 34-112, but it was decided that this was covered in other places in the codes.

DISPOSITION OF HOUSE BILL 6:

Senator Turnage moved that this bill be concurred in as amended. The motion carried unanimously.
There being no further business, the meeting was adjourned at 11:05 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chair
Senate Judiciary Committee

January 18, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration House Bill No. 41

Respectfully report as follows: That House Bill No. 41

third reading, be amended as follows:

1. Title, line 8.
Following: "91-523,"
Insert: "AND"

2. Title, line 8.
Strike: "AND 93-1401-3,"

3. Page 29, line 10.
Following: "91-523,"
Insert: "and"

4. Page 29, line 10.
Strike: "and 93-1401-3,"

And, as so amended
BE CONCURRED IN
~~BE REREFERRED~~

Everett R. Lensink Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 41

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS; AND REPEALING SECTIONS 91-104.1, 91-104.2, 91-219, 91-519, 91-523, AND 91-4312, ~~AND--93-1401-3~~, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-2-305, MCA, is amended to read:

"72-2-305. Who may witness -- effect of witness by beneficiary. (1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will is not invalid because the will is signed by an interested witness.

(3) All beneficial devises made in any will to a subscribing witness thereto are void unless there are two other competent subscribing witnesses to the same, but a mere charge on the estate of the testator does not prevent his creditors from being competent witnesses to his will.

(4) If a witness, to whom any beneficial devise, void under ~~the preceding section~~ subsection (3) is made, would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will."

Section 2. Section 72-3-309, MCA, is amended to read:

"72-3-309. Testimony of attesting witnesses in contested cases -- presumptions for self-proved will. (1) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state and competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed, subject to rebuttal, without the testimony of any witness, upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit."

Section 3. Section 72-3-803, MCA, is amended to read:

"72-3-803. Nonclaim -- limitations on presentation of claims -- exceptions. (1) With the exception of claims for taxes and claims founded on tort, ~~All~~ all claims against a decedent's estate ~~with-the-exception-of-claims-for-taxes-and~~

~~claims-founded-on-tort~~ which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) within 4 months after the date of the first publication of notice to creditors if notice is given in compliance with 72-3-801~~,~~ provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state; or

(b) within 3 years after the decedent's death if notice to creditors has not been published.

(2) With the exception of claims for taxes and claims founded on tort, ~~All~~ all claims against a decedent's estate ~~with-the-exception-of-claims-for-taxes-and-claims-founded-on-tort~~ which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within 4 months after it arises.

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance."

Section 4. Section 72-3-916, MCA, is amended to read:

"72-3-916. Distribution to trustee -- registration -- bond. (1) Before distributing to a trustee, the personal representative may require that the trust be registered, if the state in which it is to be administered provides fo registration, and that the trustee inform in writing the current beneficiaries ~~as-provided-in-[section-7-303-of-the-Uniform--Probate--Code--as--promulgated--by---the---national-conference--of--commissioners-on-uniform-state-laws]~~ and, if possible, one or more persons who under 72-1-303 may represent beneficiaries with future interests of his name and address and provide each with a copy of the terms of the trust which describe or affect his interest and with

relevant information about the assets of the trust and the particulars relating to the administration.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (1) and (2)."

Section 5. Section 72-5-414, MCA, is amended to read:

"72-5-414. Resignation or removal of conservator for cause -- successor conservator. The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor."

Section 6. Section 72-5-422, MCA, is amended to read:

"72-5-422. Power of court to authorize particular protective arrangements or transactions without appointing conservator. (1) If it is established in a proper proceeding

that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include but are not limited to:

(a) payment, delivery, deposit, or retention of funds or property;

(b) sale, mortgage, lease, or other transfer of property;

(c) entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or

(d) addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the

interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who, ~~shall have~~ upon appointment, has the authority conferred by the order and ~~serve~~ serves until discharged by order after report to the court of all matters done pursuant to the order of appointment."

Section 7. Section 72-5-425, MCA, is amended to read:

"72-5-425. Title by appointment as conservator -- appointment not transfer for certain purposes. (1) The appointment of a conservator vests in ~~his~~ him title as trustee to all property of the protected person presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys-in-fact.

(2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of

persons to make specific provision by contract or dispositive instrument relating to a conservator."

Section 8. Section 72-10-101, MCA, is amended to read:

"72-10-101. No requirement for orders and judgments to recite jurisdictional facts. Orders and judgments made by the court or judge in probate proceedings need not recite the existence of facts or the performance of acts upon which the jurisdiction of the court or judge may depend, but it ~~shall~~ is only be necessary that they contain the matters ordered, except as otherwise provided in ~~chapters 10 through 16~~ this title."

Section 9. Section 72-10-104, MCA, is amended to read:

"72-10-104. Service on guardian equivalent to service on ward interested in estate. Whenever ~~an infant~~ a minor, ~~insane~~ mentally ill, or incompetent person has a guardian of his estate residing in this state, personal service upon the guardian of any process, notice, or order of the court or judge concerning the estate of a deceased person in which the ward is interested is equivalent to service upon the ward, and ~~it is the duty of~~ the guardian ~~to~~ shall attend to the interests of the ward in the matter. Such guardian may also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind might do."

Section 10. Section 72-10-107, MCA, is amended to

read:

"72-10-107. Proceeding in chambers -- jury trial. (1) All orders mentioned in ~~chapters 10 through 16~~ this title and all proceedings in matters of probate may be made or heard either before the court or the judge thereof in chambers.

(2) When a jury is needed, the court or judge may order the trial to take place in court as provided in Title 25."

Section 11. Section 72-10-109, MCA, is amended to read:

"72-10-109. Citation -- how issued. The citation may be issued by the clerk, upon the application of any party, without an order of the judge, except in cases in which such order is expressly required by the provisions of ~~chapters 10 through 16 expressly required~~ this title."

Section 12. Section 72-10-110, MCA, is amended to read:

"72-10-110. Citation -- how and when served. (1) The citation must be served in the same manner as a summons in a civil action.

(2) When no other time is specifically prescribed in ~~chapters 10 through 16~~ this title, citations must be served at least 5 days before the return day thereof."

Section 13. Section 72-10-111, MCA, is amended to

read:

"72-10-111. Costs -- discretion of court in ordering payment. When it is not otherwise prescribed in ~~chapters 10 through 16~~ this title, the district court or supreme court on appeal may, in its discretion, order costs to be paid by any party to the proceedings or out of the assets of the estate, as justice may require. Execution for costs may issue out of the district court."

Section 14. Section 72-10-202, MCA, is amended to read:

"72-10-202. Recorded order to impart notice from date of filing. When it is provided in ~~chapters 10 through 16~~ this title that any order of the court or judge or a copy thereof must be recorded in the office of the county clerk, notice of its contents, from the time of filing ~~the same~~ it for record, ~~notice~~ is imparted to all persons ~~of the contents thereof~~."

Section 15. Section 72-12-802, MCA, is amended to read:

"72-12-802. Time limitations -- effect of vacancy in administration. The time during which there ~~shall be~~ is a vacancy in the administration must is not be included in any limitations ~~herein~~ prescribed in this title."

Section 16. Section 72-14-101, MCA, is amended to read:

"72-14-101. Short title. Parts 1 through 3 of this chapter are to be known as the "Escheated Property Act"~~,~~ ~~and it--provides--the--exclusive-method-for-vesting-title-in-the state-of-Montana-of-all-unclaimed-property.~~"

Section 17. Section 72-14-102, MCA, is amended to read:

"72-14-102. When title to escheated property vests in state. (1) Whenever the title to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, such title ~~shall-vest~~ vests in the state of Montana immediately upon the death of the owner without an inquest or other similar proceeding ~~in-the-nature of-office-found~~, and there ~~shall-be~~ is no presumption that such owner died leaving heirs or next of kin.

(2) In relation to property other than estates, title ~~shall-be~~ is presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within this state ~~has-been-or-shall-be--and--remain~~ remains unknown for a period of 20 successive years, and during such period whenever the whereabouts of such owner, beneficial owner, or ~~persons-has-been-or-shall--be--and--remain~~ person remains unknown and during such period whenever any personal property wherever situated ~~has-been-or-shall-be-and-remain~~ remains unclaimed, then in such event such personal property ~~shall-escheat~~ escheats to the state."

Section 18. Section 72-15-101, MCA, is amended to read:

"72-15-101. Other provisions to supplement chapter. When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties or for the administration of an estate in his hands, the provisions of ~~chapters-10-through 16~~ this title must govern."

Section 19. Section 72-16-201, MCA, is amended to read:

"72-16-201. Powers of department generally -- duty to supervise administration of tax laws -- reports. (1) The department of revenue in the conduct of inheritance tax affairs ~~shall-have~~ has the same ~~and--similar~~ powers ~~and authority~~ for gathering information and making investigations as is conferred by law on the department in the performance of its other duties.

(2) ~~It--shall--be--the--duty--of-the~~ The department to shall supervise the administration of ~~and-to-investigate-and cause--to--be--investigated--the---administration---of~~ the inheritance tax laws and investigate such particular estates to which the inheritance tax laws apply throughout the various counties of the state and to cause to be made and filed in its office reports of such ~~investigation~~ investigations, together with specific information and facts

as to particular estates, that may seem to require special consideration and attention by the ~~legal~~ department of the state justice; but no information so acquired ~~shall~~ may, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate."

Section 20. Section 72-16-208, MCA, is amended to read:

"72-16-208. Powers and duties of department as to nonresident estates. The department of revenue shall also gather information and make investigations and reports concerning the estates of nonresident decedents within the provisions of the inheritance tax laws and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the ~~legal~~ department of ~~the state~~ justice and to the proper district court for appropriate legal action~~;~~ but no information so acquired ~~shall~~ may, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate."

Section 21. Section 72-16-210, MCA, is amended to read:

"72-16-210. Duty of ~~attorney----general~~ justice department. ~~It shall be the duty of the legal~~ The department of ~~the--state--to~~ justice shall carry out and enforce the recommendations and directions of the department of revenue

in all matters pertaining to the conduct of inheritance tax affairs."

Section 22. Section 72-16-306, MCA, is amended to read:

"72-16-306. Recording date prima facie date of transfer -- transfers recorded after death. ~~All--transfers~~ Recorded papers evidencing a transfer of property, real, personal, or mixed, or of any interest therein coming within the provisions of ~~[this section]~~ ~~shall be~~ parts 1 through 8 are prima facie proof, for the purposes of ~~[this act]~~ parts 1 through 8, ~~to have been~~ that it was made as of the date upon which the such papers ~~evidencing such transfer are~~ were recorded~~,~~ and ~~all~~ Any such transfers transfer, if recorded after the death of the person or persons making such transfer, whatever the form of such transfer, ~~shall be~~ deemed is considered, for the purposes of taxation under the provisions of ~~[this act]~~ parts 1 through 8, to have been made by will."

Section 23. Section 72-16-312, MCA, is amended to read:

"72-16-312. Exemption -- transfers for charitable or public purposes. (1) The following transfers are totally exempt:

(a) all property transferred to the state or any of its institutions or to ~~municipal--corporations~~ local

governments within the state for strictly ~~county--city, town---or---municipal~~ local government or other public purposes;

(b) all property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, if any of the following conditions is present:

(i) the society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

(ii) the property transferred is limited for use within this state;

(iii) the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country and at the date of the decedent's death any one of the following conditions existed:

(A) the other state, foreign state, or foreign country

did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(B) the laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

(C) the society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are without discrimination gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(2) The tax imposed by 72-16-301 does not apply to

transfers to ~~the state of Montana or any of its institutions or to county, town, or municipal corporations within the state for strictly county, town, municipal, or other public purposes and~~ corporations of this state organized under its laws or voluntary associations, organized solely for religious, charitable, or educational purposes, which ~~shall~~ use the property so transferred exclusively for the purposes of their organization within the state."

Section 24. Section 72-16-423, MCA, is amended to read:

"72-16-423. Court order to be delivered and taxes paid before final judgment in estate. A copy of the court order referred to in 72-16-422 shall be delivered or mailed to the county treasurer, the administrator or executor, and the department of revenue, and no final judgment ~~shall~~ may be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed and receipts are filed with ~~such~~ the court showing the payment of all such taxes or proof is filed showing that the ~~bond~~ permission for deferral of payment authorized by 72-16-438 has been given."

Section 25. Section 72-16-437, MCA, is amended to read:

"72-16-437. Personal representative not entitled to closing unless tax paid or bond filed. No personal

representative or trustee ~~shall be~~ is entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of parts 1 through 8 unless he ~~shall produce~~ produces such receipt or a certified copy thereof or unless ~~a bond shall have been filed as prescribed by~~ permission for deferral of payment has been granted as provided in 72-16-438."

Section 26. Section 72-16-443, MCA, is amended to read:

"72-16-443. Collection of unpaid taxes. (1) If any county treasurer, the state treasurer, or the department of revenue ~~shall have~~ has reason to believe that any tax is due and unpaid under the provisions of parts 1 through 8, after the refusal or neglect of any person liable therefor to pay the same, he or it shall notify the attorney general in writing of such failure or neglect; and the attorney general, if he have has probable cause to believe that such tax is due and unpaid, shall apply to the district court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than 3 months from the date of such citation, and show cause why the tax should not be paid.

(2) The judge of the district court, upon such application and whenever it ~~shall appear~~ appears to him that any such tax accruing under parts 1 through 8 has not been

paid as required by law, shall issue such citation, ~~and the~~ The service of such citation and the time, manner, and proof thereof and the hearing and determination thereof shall conform as near as may be to the provisions of the laws governing probate practice of this state.

(3) Whenever it ~~shall appear~~ appears that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of parts 1 through 8 in ~~said~~ such district court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax, ~~;~~ and ~~it shall be the duty of~~ the attorney general, in the name of the state, ~~to~~ shall sue for and enforce the collection of such tax, and ~~it is made the duty of~~ the county attorney of the county ~~to~~ shall appear for and act on behalf of any county treasurer, who ~~shall be~~ is cited to appear before any district court under the provisions of parts 1 through 8."

Section 27. Section 72-16-704, MCA, is amended to read:

"72-16-704. Apportionment of deductions when property partly within and partly without the state. Whenever a tax ~~may be~~ is due from the estate, or the beneficiaries therein, of any resident or nonresident decedent upon the transfer of any property, when the property or the estate left by such decedent is partly within and partly without this state, or

upon any stocks, bonds, mortgages, or other securities representing property or estate partly within and partly without this state, any beneficiary of such estate ~~shall be~~ is entitled to deduct only his proper proportion of that portion of the total debts and expenses of administration which the gross estate in Montana or within its jurisdiction bears to the gross estate both within and without this state, ~~but no deduction shall be made for any federal estate, inheritance, succession, or transfer taxes paid to the United States.~~ As to his Montana exemption, each beneficiary ~~shall be~~ is entitled to deduct only that portion represented by the ratio between his interest in the property in this state or within its jurisdiction and his interest in the entire estate."

Section 28. Section 72-16-801, MCA, is amended to read:

"72-16-801. Exemption of intangible personal propert of nonresident decedent -- when. The tax imposed by parts 3, 7, and 9, and this part, in respect of personal property, except tangible personal property having an actual situs in this state, ~~shall~~ is not be payable if:

(1) the decedent is a resident of a state or territory of the United States which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state,

except tangible personal property having an actual situs in that state or territory; or

(2) the laws of the state or territory of residence of the nonresident decedent at the time of the transfer contained a reciprocal provision under which nonresidents of that state were exempted from transfer ~~tax~~ taxes or death taxes of every character in respect of personal property, except tangible personal property having an actual situs in that state, ~~providing~~ provided the state or territory of residence of such nonresident decedent allowed a similar exemption to residents of this state."

Section 29. Section 72-16-906, MCA, is amended to read:

"72-16-906. Required filings. ~~It shall be the duty of~~ the The personal representative of the estate of any decedent whose estate ~~may be~~ is subject to the payment of a United States estate tax ~~to~~ shall file duplicates of the United States estate tax returns with the district court of the county in which such estate is being probated and with the department of revenue. He shall also file with such court and with the department a certificate or other evidence from the ~~bureau of~~ internal revenue service showing the amount of the United States estate tax as computed by that ~~department~~ agency."

Section 30. Section 72-20-409, MCA, is amended to

read:

"72-20-409. Appeal. The decree so rendered ~~shall be~~ is a final order from which any party in interest may appeal as in civil actions to the ~~district~~ supreme court of the state of Montana."

Section 31. Section 72-24-103, MCA, is amended to read:

"72-24-103. For what purposes express trusts may be created. Express trusts may be created for any of the following purposes:

(1) to sell real property and apply or dispose of the proceeds in accordance with the instrument creating the trust;

(2) to mortgage or lease real property for the benefit of annuitants or other legatees or for the purpose of satisfying any charge thereon;

(3) to receive the rents and profits of real property and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of such person or for any shorter term, subject to ~~the rules of 70-1-401, Title 70, chapter 15, part 2, Title 70, chapter 17, part 1, and 70-27-101 through 70-27-107~~ Title 70, chapter 1, part 4; or

(4) to receive the rents and profits of real property

and to accumulate the same for the purposes and within the limits prescribed by ~~the sections above enumerated~~ Title 70, chapter 1, part 4."

Section 32. Section 72-26-201, MCA, is amended to read:

"72-26-201. Manner of making gift. (1) An adult person may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift:

(a) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person (an adult member of the minor's family, a guardian of the minor), or a trust company, followed in substance by the words: "as custodian for ... (name of minor) under the Montana Uniform Gifts to Minors Act";

(b) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor (an adult member, other than the donor, of the minor's family, a guardian of the minor) or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE MONTANA UNIFORM GIFTS TO MINORS ACT

I, ..., (name of donor), hereby deliver to .... (name of custodian) as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act, the following

security(ies):

(~~Insert~~ insert an appropriate description of the security or securities delivered sufficient to identify it or them.)

.....) ..... (signature of donor)

..... (name of custodian) hereby acknowledges receipt of the ~~above-described~~ above-described security(ies) as custodian for the above minor under the Montana Uniform Gifts to Minors Act.

Dated: .....

.....~~Signature~~ (signature of custodian)".

(c) if the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution for a credit to an account in the name of the donor, another adult (an adult member of the minor's family, a guardian of the minor), or a trust company, followed in substance by the words: "as custodian for .... (name o minor) under the Montana Uniform Gifts to Minors Act".

(2) Any gift made in a manner prescribed in subsection (1) may be made to only one minor, and only one person may be the custodian.

(3) A donor who makes a gift to a minor in a manner prescribed in subsection (1) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the

donor's failure to comply with this subsection nor his designation of an ineligible person as custodian nor renunciation by the person designated as custodian affects the consummation of the gift.

(4) If the subject ~~to~~ of the gift is a life insurance policy or annuity contract, an adult person may, during his lifetime, make a gift thereof to a person who is a minor on the date of the gift by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult, an adult member of the minor's family, a guardian of the minor, or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act"."

Section 33. Section 72-26-402, MCA, is amended to read:

"72-26-402. Designation of successor by custodian or minor. (1) A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated and the minor has attained the age of 14 years, the minor may designate a successor custodian by executing an

instrument of designation before a subscribing witness other than the successor.

(2) The designation of a successor custodian as provided in subsection (1) takes effect as to each item of the custodial property when the custodian resigns, dies, or becomes legally incapacitated and the custodian or his legal representative:

(a) causes the item, if it is a security which is custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian, followed in substance by the words: "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act"; and

(b) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(3) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (1) shall promptly do all things within his power to put each item of the

custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (1) by the custodian or, if none, by the minor if he has no guardian and has attained the age of 14 years or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (1) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(4) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (1) is not eligible, dies, or becomes legally incapacitated before the minor attains the age of 18 years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (1), a donor, or his legal representative, the legal representative of the custodian,

or an adult member of the minor's family may petition the court for the designation of a successor custodian."

Section 34. Section 72-30-204, MCA, is amended to read:

"72-30-204. Allowable investments -- retention of property. In addition to an investment otherwise authorized by law or by the applicable gift instrument and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or ~~if~~ in the applicable law other than law relating to investment by a fiduciary, may:

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, ~~;~~ shares ~~;~~ or obligations of associations, partnerships, or individuals, ~~;~~ and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or part of any institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board."

Section 35. Repealer. Sections 91-104.1, 91-104.2, 91-219, 91-519, 91-523, AND 91-4312, ~~and 93-1401-3,~~ R.C.M. 1947, are repealed.

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